

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

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JUDGMENT

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RAJASTHAN FINANCIAL VS SHRI LAL SINGH & ORS.
CORPORATION

S.B. CIVIL MISC. APPEAL NO.996/2005 AGAINST THE
ORDER OF SHRI ANUP CHAND GOYAL, RHJS DISTRICT
JUDGE, SRI GANGANAGAR DATED 25.5.2000 PASSED IN
CIVIL CASE NO.221/1996.

DATE OF ORDER : 24.8.2005

PRESENT

HON'BLE MR. PRAKASH TATIA,J.

REPORTABLE

Dr. Prathistha Dave with Dr. Rakesh Sinha, for the appellant.
Mr. RK Singhal for respondents no.2 and 3.

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Heard learned counsel for the appellant and learned counsel for
the respondents no.2 and 3 and perused the record also.

Brief facts of the case are that the appellant submitted an
application before the learned District Judge, Sri Ganganagar under
Section 31(1)(A)(AA) of State Financial Corporation Act, 1951 (for short
the Act of 1951). The appellant submitted that the respondent no.1
requested for loan of Rs.2 lacs on 16.2.1985, upon which the appellant

sanctioned loan of Rs.1,71,000/- in favour of the respondent no.1 on 20th March, 1985. The respondent no.1 executed the relevant documents in favour of the appellant on 27.4.1985 and the respondent no.2 and 3 stood guarantors for the repayment for the loan and interest amount, upon which the loan was disbursed to the respondent no.1. The loan was payable in 58 monthly installments with interest @ 12.5% and in case of default further interest of 7.5% was leviable. The respondent no.1 after getting the loan at Sri Ganganagar got the body built for the truck purchased by loan at Sri Ganganagar and got the truck registered in the Transport Office at the Sri Ganganagar. Since the borrower did not pay any amount of installments, therefore, a legal notice was issued to the respondent no.1. Despite this notice, no payment was made, therefore, the appellant submitted petition under Section 31 of the Act of 1951 claiming that by 31st March, 1996 total due amount in respondent was Rs.5,33,320/-. It is also stated that the appellant seized the vehicle from the respondent no.1 and found that respondent no.1 by changing the chassis number obtained a new registration certificate from Vehicle Registration Authority in the Madhya Pradesh State. Therefore, because of this fabrication of documents by the respondent the appellant could not sale the said truck by auction, despite they had right to sell the same. In these circumstances, the appellant sought permission of the court under Section 31 of the Act of 1951 for sale of mortgaged property of the guarantors respondents no.2 and 3.

The respondents no.2 and 3 submitted application under Order 7 Rule 11 CPC, seeking rejection of appellant's application filed under Section 31 of the Act of 1951, but that application was dismissed by the trial court by order dated 6.2.1999 on the ground that the objection of the jurisdiction raised by the respondents no.2 and 3 cannot be decided on application under Order 7 Rule 11 CPC as the objection as raised is a mixed question of fact and law. Therefore, the respondents no.2 and 3 guarantors submitted reply to the application filed under Section 31 of the Act of 1951 and thereafter, the respondents no.2 and 3 again took same objection about the jurisdiction of the court at Sri Ganganagar on the ground that non-applicant is doing business in State of Madhya Pradesh and, therefore, the court at Sri Ganganagar has no jurisdiction to hear the matter. It was also pleaded that the loan was advanced for purchase of a truck and this is not an industrial unit for which the proceedings can be initiated under Section 31 of the Act of 1951.

In view of the pleas taken by both the parties, the trial court framed 7 issues. The parties led their evidence and produced witnesses. The trial court after considering the evidence of the parties while deciding issue of jurisdiction, held that the court at Sri Ganganagar has no jurisdiction as the appellant failed to prove that respondent no.1 is doing business within the jurisdiction of the contract Sri Ganganagar Court.

Being aggrieved against the rejection of the petition of the appellant by the trial court vide order dated 25th May, 2000, this appeal has been preferred by the appellant-RFC.

According to learned counsel for the appellant, the facts mentioned in the application clearly disclosed that the loan was applied at Sri Ganganagar, paid by RFC at Sri Ganganagar, documents were executed by respondents at Sri Ganganagar, the borrower constructed the body of the purchased vehicle at Sri Ganganagar, the registration of the truck was obtained at Sri Ganganagar and the borrower also disclosed the area of his business as Sri Ganganagar. Not only this, but the appellant specifically pleaded that the property of the respondent is also situated in Sri Ganganagar and parties are living at Sri Ganganagar. Learned counsel for the appellant submitted that in view of the above facts and in view of the fact that the borrower respondent no.1 himself did not raise objection about the jurisdiction on the ground that he is not residing or doing business at Sri Ganganagar or cause of action has not accrued at Sri Ganganagar, therefore, the objection raised by the respondents no.2 and 3 guarantors should not have entertained by the court below. It is also submitted that there was no reason for the trial court to discard the documentary evidence containing admission of the borrower in Ex.1 and the Ex.1 was discarded by the trial court without assigning any reason.

Learned counsel for the respondents no.2 and 3 vehemently submitted that the language of Section 31 of the Act of 1951 is very clear and a bare reading of sub-section (1) of Section 31 makes it clear that the petition under Section 31 can be filed only in the court within whose limits, the industrial concern financed by the RFC, carries on the whole or a substantial part of its business. In this case, the appellant did not plead that the borrower is carrying on his business at Sri Ganganagar or within territorial jurisdiction of Sri Ganganagar. It is also submitted that relevant time of business referred in sub-section (1) of Section 31, is the time when the petition is filed by the financial institution in the court under Section 31 of the Act of 1951. It is also submitted that the vehicle in question was seized at Madhya Pradesh and the respondent no.1 borrower obtained a forged registration certificate in the State of Madhya Pradesh, therefore, if the court below has reached to the conclusion that the appellant failed to prove that the respondent no.1 was not carrying on business wholly or partly within the jurisdiction of the trial court, the trial court has not committed any error of fact. It is also submitted by learned counsel for the respondents no.2 and 3 that the borrower did not appear, but that does not take away right of the respondents no.2 and 3 to raise objection. It is also submitted that the issue has been decided by the court below after recording evidence and the court below has not rejected the appellant's application under Order 7 Rule 11 CPC. Therefore, in the

facts of this case, the court below rightly held that the court at Sri Ganganagar has no jurisdiction. In support of his contentions, learned counsel for the respondents no.2 and 3 referred the evidence produced by the appellant as well by the respondents no.2 and 3.

I considered the submissions of learned counsel for the appellant as well as learned counsel for the respondents no.2 and 3. The first question is whether the petition under Section 31 can be filed by the financial corporation against the borrower, who took loan for doing business of transportation. According to learned counsel for the respondents no.2 and 3 in sub-section (1) of Section 31 of the Act of 1951 it is clearly provided that the petition can be filed against the industrial concern and the word has been used “industrial concern”, which clearly demonstrates that this special provision has been enacted for recovery of loan amount by adopting the procedure as provided under Section 31 of the Act of 1951 in relation to the industrial concern only. I do not find any substance in the submission of learned counsel for the respondents no.2 and 3 in view of the definition of “industrial concern” given in sub-clause (c) of Section 2 of the Act of 19951 itself, which clearly says that “industrial concern” means any concern engaged or to be engaged in -

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| (i) | *** | *** | *** |
| (ii) | *** | *** | *** |
| (iii) | *** | *** | *** |

- (iv) the transport of passengers or goods by road or by water or by air or by ropeway or by lift.

The borrower took the loan for carrying on business of plying the public carrier vehicle in the State of Rajasthan, which is clear from the various documents signed by the borrower himself for taking loan from the RFC appellant, therefore, this is a case of finance to the deemed industrial unit under sub-clause (c) of Section 2 of the Act of 1951 and, therefore, a petition under Section 31 against the borrower, who obtained financial assistance from the RFC is maintainable.

Next question is whether the court below committed illegality in rejecting the appellant's application filed under Section 31 of the Act of 1951 on the ground of lack of jurisdiction. It is clear from the Ex.1 itself that the loan was taken by the borrower for business in Rajasthan and the borrower nowhere said that he stopped doing business in the State of Rajasthan. The burden to prove this issue was upon the respondents no.2 and 3 as they took this defence and court framed the issues putting burden upon the respondents no.2 and 3 to prove the issue. In view of the documents placed on record by the appellant, the burden could have been placed only upon the respondents no.2 and 3 as the documents submitted alongwith the claim petition clearly disclosed that there are admissions of the borrower about his place of business in State of Rajasthan and within the jurisdiction of the court at Sri Ganganagar. It was never the case of the respondents no.2 and 3 the the burden was

wrongly placed upon them. Otherwise also, the respondents no.2 and 3 themselves produced witnesses to discharge their burden to prove issues nos. 2 and 3, therefore, when both the parties led evidence knowing it well who has to prove the issue no.2, the onus losses its significance.

The respondents no.2 and 3 both gave their statement to prove that the borrower Lal Singh was doing business at Madhya Pradesh and was not doing business at Sri Ganganagar. The respondent Sohan Lal stated on oath that he is knowing Lal Singh borrower. Lal Singh was doing business of repairing the old trucks and selling thereof. He was never doing business of transportation or carrying the passengers in the vehicle. He also stated that he has no knowledge about the fact whether Lal Singh took loan from the RFC or not. He further stated that he did not come to the office of the RFC at Sri Ganganagar nor he gave guarantee for repayment of the loan. However, he admitted that because of saying of Jas Ram he signed certain documents. So far as business of Lal Singh at Madhya Pradesh is concerned, he stated that Jas Ram told him that Lal Singh went to Madhya Pradesh for selling the truck and, thereafter, Lal Singh did not return to Sri Ganganagar or the village of the respondents no.2 and 3. He also stated that Jas Ram accompanied the officers of the RFC to Madhya Pradesh where the truck was seized. It is clear from the statement of the respondent Sohan Lal that he had no personal knowledge that borrower Lal Singh started

business at Madhya Pradesh or was doing business at Madhya Pradesh at the time when the petition was filed by the appellant in the court at Sri Ganganagar. He said so as he was told by Jas Ram, therefore, the evidence of this witness prove nothing.

Jas Ram NAW-2 stated that in the year 1995 Lal Singh went to Raipur (Madhya Pradesh) and in the year 1995 Lal Singh stayed at the village only for 15 to 20 days and, therefore, he did not come at the village or at Sri Ganganagar. This statement was contradicted by the respondents no.2 and 3's witnesses Devi Singh NAW-3, who stated that Lal Singh went to Madhya Pradesh in the year 1986. He very specifically stated that after 1986, he did not see Lal Singh. He further stated that Lal Singh left the Madhya Pradesh and went to Punjab, which was not the case of even respondents no.2 and 3 that Lal Singh left the place in the year 1986 and subsequently, he shifted to Punjab. Therefore, in fact, there is no reliable evidence to prove that Lal Singh was doing business at Madhya Pradesh at the time of filing of the petition by the appellant. Apart from it, the trial court, without assigning any reason, discarded the undisputed documents and failed to read the fact mentioned therein wherein the respondent no.1 clearly stated that he took the loan for carrying on business in the State of Rajasthan. There was no reason for the court below to discard this documentary evidence and discard presumption of continuity of state of affairs unless rebutted

or controverted by trustworthy evidence. In view of the above, the court below committed serious error of fact and law in holding that the respondent no.1 was not doing business within the jurisdiction of the court at Sri Ganganagar. So far as question of lack of pleading of the appellant is concerned, the court failed to appreciate that the petitions are required to be read meaningfully and not as a dead letter. The appellant clearly stated in the petition itself that borrower took the loan for acquiring a truck and he got the body constructed for the truck at Sri Ganganagar and he admitted in the documents that he will do business within the State of Rajasthan. The court below further failed to appreciate that respondents no.2 and 3 very categorically stated that the borrower is known to them, but they did not produce the borrower despite the fact that borrower himself has not raised objection of jurisdiction by appearing before the court below. When the respondents no.2 and 3 found that the respondent no.1 is not appearing then they could have summoned the respondent no.1 as their witness to prove the fact as it is nobody's case that respondent no.1 developed any hostile relations with the respondents no.2 and 3 at any time.

Normally in a case where finance is given by the financial institution to a person for business of transport of passenger or good by road or by water or by air then unless otherwise proved, it is required to be presumed that the borrower will continue to do the business at the

place disclosed by him to the financier. In case there is objection of jurisdiction then burden lies upon the party, who raises objection against the admission made in writing for availing the loan facility from the financial bodies. When such objections are raised, burden lies upon the person, who claims defence against the entertainment of the petition. This is because of the reason that initially burden lies upon the plaintiff or the applicant to prove that the court has jurisdiction to hear the matter and in the case where there are admissions in writing of the other party and are not denied by that party, the issue can be framed on the basis of plea taken in the suit or plaint and by considering the effect of the documents. Therefore, the respondents no.2 and 3 if took a plea that respondent no.1 was doing business not within the jurisdiction of the court below then they should have proved this fact as a matter of fact.

Apart from it, the court below failed to appreciate that application has been filed seeking permission to sell the mortgaged property and the mortgaged property is admittedly situated within the territorial jurisdiction of the court at Sri Ganganagar and admittedly, the vehicle in question has already been seized by the appellant. Therefore, substantially the cause of action was against the borrower inseparably with the guarantors and accrued at Sri Ganganagar where the mortgaged property is situated and the borrower and guarantors are

residing.

In view of the above, the appeal of the appellant deserves to be allowed, hence allowed. The order of the court below dated 25th May, 2000 is set aside. The issue no.4 is decided against the respondents and it is held that the court at Sri Ganganagar has jurisdiction to decide the petition of the appellant. Since the court below has not decided other issues, therefore, the matter is remanded back to the court at Sri Ganganagar. Both the parties are directed to remain present in the court below on 20th Sept., 2005. The court below shall decide the petition of the appellant expeditiously by 31.12.2005.

(Prakash Tatia), J.

c.p.goyal/-